

## **REMARKS**

Applicants respectfully request reconsideration of the rejections in view of the following remarks.

### **Status of the Claims**

Claims 1–23 were pending. Examiner rejected claims 1, 9, 11, and 19 under 35 U.S.C. § 103(a) as obvious over Applicant's Admitted Prior Art ("AAPA") in view of Sudo (U.S. 6,944,119), and in further view of Harley (U.S. 7,197,243). Examiner rejected claims 2–5, 7, 12–18, and 20–23 as obvious over AAPA in view of Sudo, in further view of Harley, and in even further view of Aslanis (U.S. 6,359,933). Examiner rejected claim 6 as obvious over AAPA in view of Sudo, in further view of Harley, and in even further view of Pal (U.S. 6,353,629). Examiner rejected claim 8 as obvious over AAPA in view of Sudo, in further view of Harley, and in even further view of Kumar (U.S. 5,748,677). Examiner rejected claim 10 as obvious over AAPA in view of Sudo, in further view of Harley, and in even further view of Maloney (U.S. 6,360,369). Claims 1–23 remain pending.

### **Rejections Under 35 U.S.C. § 103(a)**

Independent claim 1 stands rejected as obvious over AAPA in view of Sudo, and in further view of Harley. Independent claim 10 stands rejected as obvious over AAPA in view of Sudo, in further view of Harley, and in even further view of Maloney. Applicants respectfully submit that the prior art of record does not establish a prima facie case of obviousness as to the pending claims. The MPEP provides:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would

have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.

See MPEP § 2143.

In *KSR Int'l Co. v. Teleflex, Inc.*, the United States Supreme Court also noted that, “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art,” but, additionally whether “the claim extends to what is obvious.” See *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741-42 (2007). Expounding on its edict, the Supreme Court went on to opine that an obviousness determination is based upon a “proper application of *Graham*,” including consideration of “secondary factors” that may weigh against an obviousness determination. See *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. at 1745 (citing *Graham v. John Deere Co. of Kansas City, et al.*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966)). The “proper application of *Graham*” begins with a determination of whether the cited prior art contains all the elements of the contested claims. See *Graham v. John Deere Co. of Kansas City*, 383 U.S. at 22 (an obviousness determination begins with a finding that “the prior art as a whole in one form or another contains all” the elements of the claimed invention.). The Examiner has not met the burden of establishing the *prima facie* case of obviousness because the prior art of record does not contain all the elements of the contested claims.

Independent claim 1 recites in part: “accounting for correlation between the frequency component amplitudes of the digital receive signal.” Independent claims 10, 11, 14, and 19 recite similar limitations. However, the cited references fail to teach or suggest the limitation. Examiner notes that AAPA and Sudo fail to teach or suggest the limitation. In each rejection, Examiner cites Harley at Fig.5; col.14 ¶.36–65 as allegedly teaching the quoted limitation. However, at the cited location, Harley teaches:

Next, a plurality of inverse FFT (IFFT) functional elements **530<sub>ij</sub>** performs short IFFTs on the output of the respective correlator **520<sub>ij</sub>**. . . . The result of the IFFT performed by each of the IFFT functional elements **530<sub>ij</sub>** is thus passed through a respective one of a plurality of peak detectors **540<sub>ij</sub>** in order to determine the **amplitude of the resulting time-domain signal**.

Harley col.41 ¶.36–38, 48–52 (emphasis added).

Determining the amplitude of a time-domain signal fails to teach or suggest accounting for correlation between the frequency component amplitudes of the digital receive signal as required by the claims. Specifically, the operations in the time-domain do not teach or suggest operations in the frequency domain.

Furthermore, no other art of record teaches or suggests the quoted limitation. For at least this reason, independent claims 1, 10, 11, 14, and 19, along with dependent claims 2–9, 12–13, 15–18, and 20–23, are allowable over the cited art. Applicants note that the instant application was filed in 2001 and has been argued in two separate appeal briefs. Applicants submit that the instant application is in condition for allowance.

## **Conclusion**

In the course of the foregoing discussions, Applicants may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the prior art which have yet to be raised, but which may be raised in the future.

It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that

additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Conley Rose, P.C. Deposit Account Number 03-2769/1789-04801/HTDC.

Respectfully submitted,

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